

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	WC Docket No. 16-132
	)	
2016 Biennial Review of Telecommunications	)	
	)	IB Docket No. 16-131
Regulations	)	

**REPLY COMMENTS OF BT AMERICAS, INC.**

BT Americas, Inc., a wholly owned indirect subsidiary of BT Group plc (collectively referred to herein as “BT”), by and through undersigned counsel, submits these reply comments in response to the Federal Communications Commission’s (Commission) Public Notice on the 2016 biennial review of telecommunications regulations.<sup>1</sup> BT is a provider of information and communications services with headquarters in the United Kingdom (UK). It is the main incumbent provider of communications and information services in the UK and, through its operating subsidiaries, is a competitive provider in the U.S. and other non-UK markets of communications, management and information services to large, multi-sited business customers and governments.

Like other commenters in this proceeding, BT has witnessed dramatic changes in the level of competition in communications markets both in the U.S. and across the globe. Nonetheless, these changes do not warrant removal of telecommunications regulations that are

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<sup>1</sup> *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations*, Public Notice, FCC 16-149 (rel. Nov. 3, 2016).

key to the existence of market competition. Contrary to the claims of some commenters, bottlenecks continue to exist in US communications markets. As a provider that must rely on other entities for key inputs to its service, BT has observed that in the U.S. (and indeed many other countries) facilities-based local access services for the business market are still dominated by one or at most two suppliers in the majority of geographic markets. Without effective targeted regulation to control against abuse of market power over bottleneck facilities, wholesale purchasers and consumers face unconscionably high rates, and unjust and unreasonable terms and conditions. Without exception, targeted, reasonable and effective economic regulation continues to be necessary for bottleneck services including business data services (BDS) worldwide.

**I. REGULATORY TREATMENT OF THE BDS MARKET IS STILL NECESSARY TO FURTHER COMPETITION.**

Some commenters have claimed that the business market is highly competitive and therefore, economic regulation is unnecessary<sup>2</sup> but such assertions are incorrect and do not present the full facts about what is happening in the market for business telecommunications services. In its comments, US Telecom states that “an economic analysis of BDS data collected by the Commission showed that as of 2013 non-ILECs had deployed competitive facilities in 95 percent of census blocks containing 99 percent of businesses.”<sup>3</sup> What US Telecom fails to disclose, however, is that those “competitive facilities” are minimal. In 91 percent of US census

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<sup>2</sup> See Comments of The US Telecom Association, WC Docket No. 16-132 (filed Dec. 5, 2016) (“US Telecom Comments”); *see also* Comments of CenturyLink, WC Docket No. 16-132, EB Docket No. 16-120, WT Docket No. 16-138 (filed Dec. 5, 2016) (“CenturyLink Comments”).

<sup>3</sup> US Telecom Comments at 4.

blocks with BDS demand there are two or fewer facilities-based providers, even when cable providers using Ethernet over hybrid fiber-coaxial (HFC) facilities are counted.<sup>4</sup> As Sprint noted in the Commission's BDS proceeding, in more than one in three census blocks with BDS demand, the ILEC is the only provider with facilities.<sup>5</sup> A market characterized by one or at most two providers is not and cannot be considered a competitive market, especially in telecommunications access where the entry barriers to building alternate facilities are so high.

Furthermore, census block based data may overstate actual competitive alternatives. The mere fact that a competitive provider's fiber facilities run through a census block does not indicate that fiber would be deployed to buildings or cell sites with BDS demand in that census block. Back in 2007, AT&T claimed that scores of CLEC providers were blanketing areas of special access demand with CLEC fiber and that entry by cable and wireless providers was intensifying the level of competition in the special access market.<sup>6</sup> Yet, the Commission's outside econometrician, Dr. Rysman, showed in his white paper that by the end of 2013, more than 77 percent of locations (*i.e.*, buildings or cell sites) with BDS demand were served by only one provider (whether ILEC or competitive), and about an additional 22 percent were served by only two providers.<sup>7</sup> This was the case despite long-standing claims from the

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<sup>4</sup> The inclusion of Ethernet over HFC overstates the existence of competitive alternatives because this service is available at bandwidths of 10 Mbps or less and because it does not provide the same levels of service quality that BDS does. This is BT's experience and indeed, that of other purchasers as well. *See e.g.*, Sprint, *Notice of Ex Parte*, WC Docket 05-25 (Apr. 18, 2016).

<sup>5</sup> *See Reply Comments of Sprint Corporation, Attachment A - Further Supplemental Declaration of William P. Zarakas*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, 4-6 (filed Aug. 9, 2016) (36 percent of census blocks with demand have only the ILEC as a facilities-based provider).

<sup>6</sup> *See Supplemental Comments of AT&T, Inc.*, WC Docket 05-25 (filed Aug. 8, 2007).

<sup>7</sup> *See Business Data Services in an Internet Protocol Environment et al.*, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, Tariff Investigation Order and Further Notice of

incumbent community that there was an abundance of competitors providing special access services well before 2010.<sup>8</sup>

In fact, CLECs, like Level 3 and Windstream, indicated in the BDS proceeding that they would not build competitive facilities to serve buildings with demand of 100 Mbps or less if such buildings are located 100-1000 feet or more from their facilities.<sup>9</sup> Contrary to what parties like US Telecom assert, these BDS markets are not competitive. Moreover, the advancement of facilities-based competition has been slowed (if not reversed) by the decline in the number of CLECs, making suspect the assumption that a buildout of BDS facilities by third and fourth competitive providers will occur.<sup>10</sup> Therefore, the Commission should not only reject calls to eliminate existing economic regulation of BDS services but should adopt regulations to ensure that the one or two suppliers who dominate this BDS market are regulated effectively to ensure just and reasonable rates and nondiscriminatory rates, terms and conditions.

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Proposed Rulemaking, FCC 16-54 (rel. May 2, 2016), Appendix B, White Paper, Marc Rysman, *Empirics of Business Data Services* (rev. June 2016), Table 7, 15.

<sup>8</sup> See e.g., *ex parte* filing of US Telecom, Attachment – High-Capacity Services: Abundant, Affordable, and Evolving, WC Docket No. 05-25 (July 16, 2009); *ex parte* filing of Qwest Communications International, Inc., WC Docket No. 05-25 (Sept. 6, 2007).

<sup>9</sup> See Reply Comments of Level 3 Communications, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, 18-19 (filed Aug. 9, 2016); Reply Comments of Windstream Services, WC Docket Nos. 16-143, 15-247, 05-25, RM-10593, 5 (filed Aug. 9, 2016).

<sup>10</sup> For example, TW Telecom was acquired by Level 3, and Level 3 is now in the process of being acquired by CenturyLink. Additionally XO Communications was recently acquired by Verizon. See *Applications Filed for the Transfer of Control of TW Telecom Inc. to Level 3 Communications, Inc.*, WC Docket No. 14-104, Memorandum Opinion and Order, DA 14-1543 (rel. Oct. 24, 2014); see also *Applications of XO Holdings and Verizon Communications Inc.*, WC Docket No. 16-70, Memorandum Opinion and Order, DA 16-1281 (rel. Nov. 16, 2016).

In addition, the Commission must reject suggestions from commenters to eliminate accounting, reporting, recordkeeping, and tariffing rules relating to BDS services. The Commission should not repeal its rule prohibiting providers from disclosing information about planned network changes to separate affiliates, unseparated affiliates, or unaffiliated entities until public notice has been given.<sup>11</sup> This rule serves an important purpose in preventing discrimination, a concern that remains valid today despite changes in telecommunications markets. BT would be open to exploring less burdensome or more efficient mechanisms to protect against discrimination while providers transition to new technologies, but BT rejects the idea that discrimination no longer is a concern. Repeal of the non-discrimination rule would harm, not promote, the market.

Finally, BT is particularly concerned about pleas to eliminate the tech transition rule that requires ILECs to provide competitive carriers reasonably comparable wholesale access on reasonably comparable rates, terms and conditions when seeking 214 authority to discontinue TDM-based special access or a commercial wholesale platform service.<sup>12</sup> This rule continues to be necessary until the Commission adopts a comprehensive set of BDS rules that would ensure competitive rates, terms and conditions.

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<sup>11</sup> 47 C.F.R. § 51.325(c).

<sup>12</sup> *See Technology Transitions*, GN Docket No. 13-5, WC Docket No. 05-25, RM-11358, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, ¶ 132 (2015).

## II. THE COMMISSION HAS STATUTORY OBLIGATIONS TO MAINTAIN REASONABLE AND NECESSARY ECONOMIC REGULATIONS.

US Telecom asserts without basis that regulation that encourages resale over facilities investment must be rejected.<sup>13</sup> BT agrees that where meaningful economic competition exists economic regulation is unnecessary. However, resale obligations have been a bedrock of U.S. competition policy since the early 1970s. They have promoted both end user competition and the deployment of alternative facilities quite well. Unless and until meaningful economic competition develops, mandatory resale obligations remain necessary. Moreover, as demonstrated by evidence of broadband deployment in other markets, targeted and reasonable economic regulation of bottleneck facilities does not dis-incentivize investment.

In the UK, BT delivers superfast broadband at speeds of 24 Mbps to more than 90 percent of homes and businesses. In addition, BT has announced plans to spend approximately £6 billion in capital expenditure over the next three years.<sup>14</sup> This is despite economic regulation of its bottleneck facilities. Additionally, the U.S. has international commitments to make resale available of packet-based and switched data transmission services at reasonable and nondiscriminatory rates, terms and conditions.<sup>15</sup> Congress explained in its 1994 legislation

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<sup>13</sup> See US Telecom Comments at 7 (“More regulation—especially regulation that encourages resale over facilities investment—is unlikely to improve the competitive landscape where meaningful economic competition already exists.”).

<sup>14</sup> See BT Public Affairs briefing note, Nov. 2016, *available at* <https://www.btplc.com/Thegroup/UKPublicAffairs/UK/Briefingnotes/fibre-broadband-update.pdf>; *see also* BT, “BT to invest billions more on fibre, 4G and customer service,” Press Release (May 5, 2016), *available at* <http://www.mynewsdesk.com/uk/bt/pressreleases/bt-to-invest-billions-more-on-fibre-4g-and-customer-service-1394948>.

<sup>15</sup> See Section 5, GATS Annex on Telecommunications, the United States of America, Schedule of Specific Commitments, GATS/SC/90 (15 April 1994) and Supplement 2, GATS/SC/90/Suppl2 (11 April 1997).

implementing the General Agreement on Tariffs and Trade (GATT) that its purpose in negotiating an agreement on telecommunications in the General Agreement on Trade in Services (GATS) and for the U.S. to enter into such commitments was so that US companies could obtain access to foreign telecommunications markets via resale, amongst other strategies.<sup>16</sup> Given the U.S.'s expectation that its companies would have access to foreign telecommunications markets via resale, it would be unfair and unjust for the U.S. to eliminate resale regulation in its domestic market in the erroneous assumption that it must do so in order to “favor” facilities investment and therefore, US Telecom’s view must be rejected.

### **III. THE USF CONTRIBUTION METHODOLOGY IS NOT SUSTAINABLE AND SHOULD BE REFORMED.**

An area that is in need of regulatory reform by the Commission is the universal service fund (USF) contribution approach. BT agrees with commenters that the current contribution methodology, which relies primarily on revenues from legacy telecommunications services, has caused the contribution factor to skyrocket and is not sustainable.<sup>17</sup> As CenturyLink explains, “[t]he current contribution methodology relies on revenues from services that make up an increasingly smaller portion of communication services as communications continue to move to broadband Internet-based services that are not assessable at all or are only

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<sup>16</sup> Uruguay Round Agreements Act, Pub. L. 103-465 Section 135 (b) – “The principal negotiating objective of the United States in the extended negotiations on basic telecommunications services to be conducted under the auspices of the WTO is to obtain the opening on non-discriminatory terms and conditions of foreign markets for basic telecommunications services through ... the resale of services on existing networks.”

<sup>17</sup> See e.g. CenturyLink Comments at 15; Comments of Verizon, IB Docket No. 16-131, ET Docket No. 16-127, PS Docket No. 16-128, WC Docket No. 16-132, WT Docket No. 16-138, 12-14 (filed Dec. 5, 2016).

partially assessable.”<sup>18</sup> The Commission’s continued failure to reform the USF contributions base undermines Section 254’s mandate of sufficient, predictable and technology neutral universal service support. As the current funding base declines, the USF rate will continue to rise, threatening services that are subject to the fee.

Moreover, the cumulative effect of the many fees and surcharges is overwhelming. The Commission’s USF rate is among the highest, if not the highest universal service rate assessed in the world. The USF charge generally appears in a “taxes, fees and surcharges” section on consumer bills, along with other regulatory fees for TRS, NANPA, LNP, and e911. Collectively, such regulatory fees assessed to customers can add 22 percent or more to the customer’s invoice. This hodge-podge of fees and charges creates customer annoyance and confusion about the various fees, and the various ways that service providers apply those fees. Even providers like BT face difficulty in determining how competitors have applied these fees, which makes it very difficult for BT to provide apples-to-apples quotes to prospective customers.

Moreover, due to changing technology and new service offerings, it is becoming increasingly difficult to apply with certainty the Commission’s complex and ambiguous rules around what is telecommunications versus non-assessable information services. There is no doubt that the contribution mechanism needs to be administratively simplified, expanded to a wider contribution base, and applied in a competitively neutral manner. BT encourages the Commission to assess its USF contribution rules and begin efforts for reform that recognize the new landscape of telecommunications services.

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<sup>18</sup> CenturyLink Comments at 15.



## IV. CONCLUSION

The Commission should not repeal its regulation of BDS services as bottleneck control has continued to persist in this market. Indeed, targeted, effective, and reasonable economic regulation of BDS services needs to be adopted by the Commission. Such action by the Commission is especially important in the wake of numerous industry consolidations that have already been approved and are being considered and the expectation that the trend towards further consolidation is expected to continue.

Respectfully submitted,

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